



GOVERNMENT OF PUERTO RICO  
DEPARTMENT OF LABOR & HUMAN RESOURCES

November 10, 1999

**Re: Inquiry No. 14692**

This is in reply to your inquiry pertaining to Puerto Rico's Employment Security Act (Act No. 74 of June 21, 1956, as amended); the Non-Occupational Disability Act (Act No. 139 of June 26, 1968, as amended); and the Social Security Act for Chauffeurs and Other Employees (Act No. 428 of May 15, 1950, as amended). Your specific inquiry is as follows:

The purpose of this letter is to obtain a formal opinion as to whether or not an insurance company with no employees in Puerto Rico is subject to paying the unemployment insurance, disability insurance and ["seguro social choferil"]. At one point some ten years ago, our company [...] had a few employees in Puerto Rico. At that time, our general agent held a salaried position and the company also paid for his office staff. This practice was discontinued in 1990. Because we had employees at that time, we began submitting the quarterly statement for all three types of insurance.

[...]. The fact is that our entire operation in Puerto Rico is based on the payment of commissions to licenced independent contractors. This includes everyone listed in the attached summary from the general agent, [...], to the newest associate. We have also included a copy of the independent agent's agreement they are required to sign and abide by.

We also withhold seven percent of their monthly income as required by the laws of Puerto Rico for independent sales agents as our understanding is that they are independent contractors, and they own their own business. They are responsible for paying their taxes and any state required insurance. We know that many of these agents are licensed/appointed with several

other insurance companies. Those that are vested continue to draw commissions even though they are no longer active agents with our company. We have informally contacted the local/domestic insurance companies, and it appears that they do not view themselves as being subject to this tax. You may note that the standard agent's agreement enclosed has a thirty day notice of termination clause. So an agent may choose not to represent our company nor sell our products by simply giving us thirty days["] notice. We can do likewise.

There is clearly, on the IRS ruling, no employer to employee [sic] relationship with this contractual arrangement. It would appear to us that the insurance agent is never in fact "unemployed" unless he chooses to do so by terminating his license with the Insurance Commissioner of Puerto Rico or simply exercising his thirty day notice to the company. We believe that we should not be subject to this insurance on behalf of non-employee "independent agents", and that it should be the sole responsibility of the independent agent. We also believe that these contributions are not usually available to terminated independent agents because, in fact, they were never employed by our company. We also question whether this contribution is of any benefit to any of our agents, because even if they apply for it, they can not demonstrate that they were employed by [our company]. So the question is: who benefits from these monies? We respectfully request clarification of this issue.

The underlying assumption in your inquiry appears to be that an employment relationship is a prerequisite for individuals to qualify for unemployment and disability benefits under the applicable laws. The term "employment", however, as defined in § 702(k)(1)(A)(iii) of the Puerto Rico Employment Security Act, 29 L.P.R.A. 701 et seq., includes "insurance salesmen", although not specifying whether such individual has to be an employee. This matter, however, is subsequently addressed at § 702(k)(1)(5), which provides the following:

Service performed by an individual shall be deemed to be employment subject to this chapter irrespective of whether a management-labor relationship [sic] exists, unless  
and until it is shown to the satisfaction of the Secretary that --

(A) Such individual has been and will continue to be free from control and direction in the performance of such service, both under his contract for the performance of service, and in fact;  
and

(B) Such service is performed either outside the usual course of the business for which the service is performed or outside of

all the places of business of the enterprise for which the service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

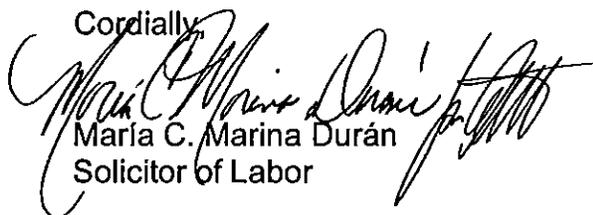
In other words, the existence of an employment relationship is irrelevant in determining whether an insurance salesperson is entitled to unemployment benefits under the Employment Security Act, *supra*, except under the limited conditions specified in (A) through (C) above. The answer is the same with respect to Puerto Rico's Non-Occupational Disability Benefits Act, which contains a virtually identical provision at 11 L.P.R.A. § 202(j)(5).

On the other hand, employees covered by social security benefits for chauffeurs and other employees (29 L.P.R.A. 681, *et seq.*) are excluded from coverage under the Non-Occupational Disability Benefits Act, *supra*. See §702(j)(6)(R). Accordingly, individuals who receive benefits under the Non-Occupational Disability Benefits Act, *supra*, are not entitled to similar benefits under the Social Security Act for Chauffeurs and Other Employees, *supra*, and viceversa. Both benefits may be concurrently provided on a voluntary basis, however, pursuant to § 707(e)(1).

In summary, it was clearly the legislative intent to provide the aforementioned benefits to insurance salespersons, regardless of whether such salespersons in a employee or an independent agent. Accordingly, an insurance salesperson is not required to demonstrate that he or she was employed by any particular insurance company in order to qualify for such benefits.

We trust the foregoing is responsive to your inquiry.

Cordially,



María C. Marina Durán  
Solicitor of Labor